



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

June 23, 1952

Hon. Henry Wade
District Attorney
Dallas, Texas

Opinion No. V-1469

Re: Authority of the commissioners' court to consolidate the voting in two or more adjacent precincts to a single polling place.

Dear Sir:

You have asked for an opinion of this office on the authority of the Commissioners' Court of Dallas County to consolidate the voting in two or more adjacent election precincts so that only one polling place will be maintained for the several precincts. You have pointed out that the commissioners' court has adopted voting machines for use in Dallas County, and you state that the county does not have a sufficient number of machines to enable the election officials to maintain machines in each of the election precincts of the county. Instead of using paper ballots in some of the precincts (as would be permissible under Section 79 of the Election Code), the commissioners' court is considering the feasibility and legality of consolidating the voting for several precincts at one place. You have been advised that "from a mechanical standpoint such consolidation may be had without confusion as to the results even though precinct offices in the precincts using the same machine may be involved."

Section 12 of the Election Code (V.A.T.S. Election Code, Art. 2.04) provides that the commissioners' court may divide the county into convenient election precincts at each July or August term of the court. Section 5 of Section 79 (V.A.T.S. Election Code, Art. 7.14), which governs in counties where voting machines are used, reads:

"... The Commissioners Court of any county in the State of Texas, which has adopted voting machines for that county or any portion thereof may, if they deem it proper, at each August term of court, divide their respective

counties, and counties attached thereto for judicial purposes, into convenient election precincts, containing any number of qualified electors, each of which precincts shall be differently numbered and described by natural, or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three (3) consecutive weeks. . . . The Commissioners Court shall cause to be made out and delivered to the County Tax Assessor and Collector, before the first day of each September, a certified copy of such last orders for the year following. . . ." (Emphasis added throughout.)

In Wilson v. Weller, 214 S.W.2d 473 (Tex. Civ. App. 1948), it was held that the commissioners' court could not change election precinct boundaries at any time other than that specified in the statute. As to the court's being able to change the election precinct boundaries during 1952 with a view to having the new precincts observed in the second primary or the general election this year, we are of the opinion that this cannot be done. We do not think the new order could possibly be observed before completion of the publication requirements; and upon consideration of other relevant provisions, it is our opinion that changes in election precincts are not to be observed in the actual conduct of elections until the following year. We think it is obvious from the last provision of Section 79 quoted above (which is similar to a provision in Section 12 also) and from the various provisions relating to the preparation and procurement of lists of qualified voters for each election precinct that the Legislature could not have intended that the newly designated precincts should be observed prior to the time when new lists of voters would be prepared. See Wilson v. Weller, supra.

Section 14 of the Election Code provides that "all voters shall vote in the election precinct in

which they reside."¹ This requirement is made applicable to voting in counties using voting machines by the provision in Section 23 of Section 79 which states that "the provisions of all other laws relating to the conduct of elections or primary elections shall so far as practicable, apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided." Furthermore, references throughout Section 79 make it clear that the Legislature intended for a polling place to be maintained in each election precinct. Differences in the number of electors which may be accommodated at polling places using voting machines over those which may be accommodated at voting places using paper ballots are taken into account in the provision of Section 79 which allows the commissioners' court to include "any number of electors" in an election precinct in counties where voting machines are used.

The decisions have held that a vote cast by an elector in an election precinct other than the precinct of his residence is invalid, where a polling place was maintained in the precinct of his residence. See, e.g., Spraggins v. Smith, 214 S.W.2d 815 (Tex. Civ. App. 1948). However, such cases do not involve the validity of ballots cast outside the election precinct of the voters' residence where no polling place was opened within the precinct and where those in charge of conducting the election had directed persons to vote at another polling place. In the latter situation, the courts have held that the election is not automatically rendered void or the ballots invalidated by their being cast outside the precinct of the voters' residence. Ex parte White, 33 Tex. Crim. 594, 28 S.W. 542 (1894); Ralls v. Parish, 151 S.W. 1089 (Tex. Civ. App. 1912). In State v. Self, 191 S.W.2d 756 (Tex. Civ. App. 1945), the court said:

¹ In Att'y Gen. Op. V-1449 (1952), it was found unnecessary there to decide whether the Legislature had created an exception to this requirement with respect to absentee voting in county-wide elections or whether, on the other hand, the Legislature had designated the entire county as a special election precinct for absentee voting. However, any possible exception therein created was brought about by the Legislature itself. Nowhere has the Legislature authorized the commissioners' courts to make exceptions to the general requirement set out in Section 14.

" . . . In any event, we are of the opinion that the election cannot be declared void simply because the polling place was situated outside the territorial boundaries of the area sought to be annexed, in the absence of a showing of fraud, unreasonable location of the polling place, or proof that such location probably affected the outcome of the election."

In Waters v. Gunn, 218 S.W.2d 235 (Tex. Civ. App. 1949), a school bond election had been conducted at only one polling place, although the school district embraced several election precincts, in which polling places were maintained in general and primary elections. It was shown that at a number of previous school elections only this one voting place had been used. The appellants contended that the election was void under a provision in Article 2955a, V.C.S. (now Section 35 of the Election Code) similar to that in Section 14. In affirming the trial court's judgment, the Court of Civil Appeals stated:

"It is well established by many decisions of the courts of this state that failures and irregularities in the observance of provisions of the statutes concerning such matters as this will not invalidate an election unless they have affected or changed the result from that which the returns show it to have been."

In all these cases, which arose after the election had already been concluded, the courts recognized that the failure to observe the requirement for voting within the precinct was an irregularity. They also recognized that facts might have existed which would have rendered the election void--for example, if it had been found that a substantial number of voters had been prevented from voting as a result of the location because of distance, lack of notice, or other reason.

It would be impossible for a court to say, in advance of the election and without knowledge of all the facts which might develop in connection with the conduct of the election, that a failure to observe this requirement would not render the election invalid. Under these

circumstances, this office is certainly not in a position to say that the commissioners' court may now disregard the provisions relating to formation of election precincts and designation of polling places within each precinct without jeopardizing the validity of the election. Therefore, we must advise you that the commissioners' court has no authority to order a consolidation of voting in two or more adjacent election precincts so as to dispense with the requirement for maintaining a polling place within the territorial limits of each separate precinct, and in our opinion the commissioners' court should not take such action.

SUMMARY

The election laws of Texas require that a polling place be maintained in each election precinct. The commissioners' court does not have authority to consolidate the voting in two or more adjacent precincts to a single polling place.

APPROVED:

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MKW:wb

Yours very truly,

PRICE DANIEL
Attorney General

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